

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CHAD J. CONRAD and JEFFREY A. SCHULTZ,
JR.,

Plaintiffs,

v.

CAPTAIN LEROY DUNAHAY, JR., and
NICHOLAS R. KLIMPKE,

Defendants.

OPINION & ORDER

17-cv-418-jdp

Pro se plaintiffs Chad J. Conrad and Jeffrey A. Schultz are state prisoners incarcerated at the Jackson Correctional Institution (JCI). They are proceeding on due process, equal protection, and First Amendment retaliation claims concerning the confiscation of their personal property by defendants, Wisconsin Department of Corrections officers.

Plaintiffs move for sanctions under Federal Rule of Civil Procedure 37. Dkt. 73. They explain that on June 18, defendants' counsel sent them a letter stating that documents responsive to one of plaintiffs' requests, labeled Bates No. 871-954, were enclosed. But in fact, those documents were not enclosed. On June 19, plaintiffs notified counsel of the mistake and requested that the documents be sent. Counsel responded on June 29, explaining that "due to a staffing issue," he was not yet able to respond to plaintiffs' June 19 letter, but anticipated sending a response the following week. Dkt. 73-7. Plaintiffs received the June 29 letter on July 2. On July 9, having heard nothing more, plaintiffs filed their motion for sanctions.

In response, defendants have filed a copy of a July 3 letter sent to plaintiffs, which states that Bats 871-954 are enclosed. Dkt. 74-1. So it appears that defendants have provided the

documents at issue to plaintiffs, but plaintiffs had not received them by the time they filed their motion for sanctions.

As I explained in my July 16 order, sanctions under Rule 37(a)(5) are allowed only when a motion to compel is granted, and they are limited to “the movant’s reasonable expenses incurred in making the motion, including attorney’s fees.” Dkt. 72. Plaintiffs never moved to compel the discovery discussed in their sanctions motion, and it appears that plaintiffs have now obtained the discovery. So sanctions aren’t called for, and I will deny plaintiffs’ motion.

ORDER

IT IS ORDERED that plaintiffs Chad J. Conrad and Jeffrey A. Schultz, Jr.’s motion for sanctions, Dkt. 73, is DENIED.

Entered July 19, 2018.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge